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BLUMENFELD & COHEN  
SUMNER SQUARE  
1615 M STREET, N.W. SUITE 700  
WASHINGTON, D. C. 20036

202 955-6300

FACSIMILE 202 955-6460

<http://www.technologylaw.com>

4 EMBARCADERO CENTER  
SUITE 1170  
SAN FRANCISCO, CA 94111  
415 394-7500  
FACSIMILE 415 394-7505

May 17, 1999

Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B204F  
Washington, D.C. 20554

*VIA HAND DELIVERY*

Dear Ms. Salas:

Enclosed please find for filing one original and four (4) copies of International Telecard Association's (ITA's) Comments in Common Carrier Docket 96-128. Also enclosed is one "Receipt" copy to be date-stamp and returned.

All parties to this proceeding have been served via first class mail according to the attached service list.

Please do not hesitate to contact with any questions

Sincerely,



Stephanie A. Joyce

*Attorney for International Telecard Association*

Enclosures

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**MAY 17 1999**  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
RBOC/GTE/SNET Payphone Coalition	)	NSD File No. L-99-34
Petition for Clarification Regarding	)	
Carrier Responsibility for Payphone	)	
Compensation Payment	)	

**COMMENTS OF THE INTERNATIONAL TELECARD ASSOCIATION**

The International Telecard Association (“ITA”), by its attorneys, submits these comments pursuant to the Commission’s Notice<sup>1</sup> in the above-captioned proceedings in opposition to the request for further consideration of the Commission’s rules for payphone service provider (“PSP”) compensation. The relief requested by the RBOC Coalition improperly proposes reconsideration and amendment of the Commission’s rules in a manner that would fundamentally alter the settled payphone compensation regime. Whatever its merits – which ITA strongly believes are none – the RBOC Coalition proposal should be adopted, if at all, only subject to a full notice-and-comment rulemaking.

**INTRODUCTION**

The RBOC Coalition asks the Commission to “clarify” its rules by concluding that the “entity identified by the Carrier Identification Code (‘CIC’)” must compensate the PSP for 1-800

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<sup>1</sup> *Common Carrier Bureau Seeks Comment on the RBOC/GTE/SNET Payphone Coalition Petition for Clarification Regarding Carrier Responsibility for Payphone Compensation Payment*, Public Notice, DA 99-730 (Apr. 15, 1999) (“Notice”).

and dial-around payphone calls.<sup>2</sup> Arguing that the Commission's present rule "has led to disagreements among PSPs and IXC [interexchange carriers], and has encouraged some IXCs to shirk their payment responsibilities,"<sup>3</sup> the RBOC Coalition proposes that the CIC mechanism will best ensure proper compensation of PSPs.

The Commission should deny this request as an improper means for amending a settled rule that will have far-reaching consequences in an already besieged industry. The Commission's implementation of Congress's mandate in Section 256<sup>4</sup> to encourage competition in payphone service has been an arduous process that finally should come to closure. Rather than focus its efforts on complying with the Commission's rules,<sup>5</sup> however, the RBOC Coalition once again seeks to amend the rules without regard to their impact on the broader industry. Imposing payphone compensation obligations on resellers via a CIC mechanism would put an administrative monkey-wrench in a process that is already costly, confusing and burdensome for all involved. The Commission should provide finality to the payphone and IXC industries by refusing to revisit its "carrier-pays" rule. If it feels obligated to revise its rules, the Commission should conduct a full rulemaking, as it has done in the past, to reexamine the entire compensation structure instead of changing one part of the rules, in isolation, in response to a single petition.

### DISCUSSION

The Commission adopted the present "carrier-pays" rules for payphone compensation in 1996, concluding that "the interests of administrative efficiency and lower costs" favor rules that obligate the "primary beneficiary" of payphone dial-around calls to compensate the underlying

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<sup>2</sup> RBOC Coalition Petition at 1.

<sup>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. § 256.

<sup>5</sup> The RBOC Coalition appears to ignore the PSP compensation implications of its own failure to comply with Commission coding digit rules. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, DA 98-2644 (Dec. 31, 1998).

PSP.<sup>6</sup> Further, the Commission determined that only facilities-based providers, defined as the owner of the first switch to which a payphone call is routed, can best track payphone calls and can recoup their payphone compensation costs from any underlying reseller.<sup>7</sup> As the Commission reasoned, only facilities-based IXCs have the ability to “track[] calls from origination to termination,”<sup>8</sup> while with non-facilities based carriers, “telecommunications services are often sold in advance, particularly in the debit card context, and resold more than once before a caller ultimately uses the service, [making it] difficult to identify the party that is liable for the per-call compensation.”<sup>9</sup>

Having survived several petitions for reconsideration,<sup>10</sup> this facilities-based “carrier-pays” rule has been the foundation of the Commission’s payphone deregulation efforts for almost three years. It should not be changed now merely for the sake of expediency. Moreover, the considerable tumult suffered by the payphone industry through two remands on the compensation rate and several waivers of coding digits appears soon to be coming to an end. It is unwise now, especially with this petition as a vehicle, to consider fundamentally changing the payphone rules by re-determining who pays PSPs.

I. THE NEED FOR FINALITY IN THE PAYPHONE INDUSTRY REQUIRES THAT THE COMMISSION DISMISS THE RBOC COALITION PETITION AS A LATE-FILED RECONSIDERATION

The RBOC Coalition petition, obliquely styled as a petition for clarification, is no more than a petition for reconsideration of the carrier-pays rules, filed two years late. The

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<sup>6</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 20,541, 20,586 (1996) (“*Payphone Order*”); *recon. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd. 20,940, 21,277 (1996) (“*Payphone Order on Recon*”).

<sup>7</sup> *Payphone Order*, 11 FCC Rcd. at 20,586.

<sup>8</sup> *Payphone Order on Recon*, 11 FCC Rcd. at 21,277.

<sup>9</sup> *Payphone Order*, 11 FCC Rcd. at 20,586.

Commission has routinely dismissed such petitions for “clarification” where the relief sought is in reality a rule change.<sup>11</sup> Here, the RBOC Coalition seeks a fundamental change in the Commission’s determination of “who pays” that would dismantle the present compensation structure and would disrupt the settled regulatory expectations of thousands of resellers. The Commission should not invite such action. The industry needs finality, at the very least, in order to create a workable compensation formula. The RBOC Coalition’s complaint that some IXCs refuse to pay their PSP compensation obligations does not warrant a change in these settled rules. If there are in fact parties that are in violation of their compensation obligations, the Commission’s formal complaint process is more than adequate relief.

## II. A PETITION FOR CLAIFICATION IS AN IMPROPER FORUM FOR CHANGING THE PRESENT CARRIER-PAYS REGIME

The Commission should not accept the RBOC Coalition petition as a vehicle for amending its carrier-pays rules. As Sprint correctly noted with respect to the Coalition’s earlier letter, the precursor to its petition,<sup>12</sup> it was “improper as a means of procedure and wrong as a matter of substance.”<sup>13</sup> Sprint argued that “[t]he accepted way to pursue such requests is to file a petition for declaratory ruling,”<sup>14</sup> this argument applies equally to the RBOC’s instant petition. The RBOC Coalition does not seek “clarification” of the carrier-pays rules at all. It seeks to obligate a new set of resale carriers – anyone with a CIC – on a basis that the Commission

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<sup>10</sup> AT&T, Sprint, AirTouch, PICA, PageMart and PageNet filed petitions on this issue.

<sup>11</sup> See, e.g., *Application of College and University Telecommunications Administrators, American Council on Education, and National Association of College and University Business Officers Petition for Clarification, Memorandum Opinion and Order*, 8 FCC Rcd. 1781 (1993) (dismissing petition for clarification filed nine months after Commission release of final order on grounds that it was a late-filed petition for reconsideration).

<sup>12</sup> Letter of Michael Kellogg on behalf of the RBOC Coalition to Lawrence Strickling, Chief of Common Carrier Bureau (Nov. 17, 1998).

<sup>13</sup> Letter of Richard Juhnke on behalf of Sprint to Lawrence Strickling (Dec. 4, 1998).

<sup>14</sup> *Id.* at 2.

already has twice declined to accept. Even if the RBOC Coalition is correct in its suggestion, the Commission should not employ the RBOC Coalition petition to implement this proposal.

Indeed, the Commission's rationale in routinely dismissing late-filed reconsiderations is that rules promulgated and settled via open notice-and-comment rulemaking should not be altered in an abbreviated petition process. Sound public policy, if not settled principles of administrative law,<sup>15</sup> dictates that parties should not be able to obtain a decision favorable only to them by filing a petition outside of formal public notice and industry-wide scrutiny. Not only would this process produce a one-sided result, it has the potential to affect parties' interests negatively without their input.

If, after three years under the carrier-pay rules, the Commission has decided that a change in its methodology is warranted, the Commission should begin a rulemaking process to accommodate a thorough and thoughtful review of the crucial issues surrounding PSP compensation. This review should include not only the RBOC Coalition's issue, but also a re-examination of the basic structure of payphone compensation, including the caller-pays option, call tracking obligations, and the like. Rather than implement a hasty, stopgap measure as the RBOCs would suggest, notice-and-comment rulemaking will allow the Commission to review all aspects of this complex industry and produce a final result that is fair, comprehensive and practical. Only through such a comprehensive rulemaking can the Commission ensure that the payphone industry experiences a more smooth and workable transition than it has previously under the *Payphone Orders*.

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<sup>15</sup> *Solite Corp. v. U.S. E.P.A.*, 952 F.2d 473, 484 (D.C. Cir. 1991).

### CONCLUSION

For all these reasons, the Commission should dismiss the RBOC Coalition Petition and should issue a Further Notice of Proposed Rulemaking on any compensation issues for which it believes amendment of its rules may be warranted.

Respectfully submitted,

By: 

Glenn B. Manishin

Stephanie A. Joyce

Blumenfeld & Cohen – Technology Law Group

1615 M Street, N.W., Suite 700

Washington, D.C. 20036

202.955.6300

202.955.6460 facsimile

*Attorneys for International Telecard Association*

Dated: May 17, 1999.

## CERTIFICATE OF SERVICE

I, Stanley M. Bryant, do hereby certify that on this 17<sup>th</sup> day of May, 1999, that I have served a copy of the foregoing document via \* messenger and U.S. Mail, postage pre-paid, to the following:

  
Stanley M. Bryant

\*Dorothy T. Attwood  
Chief, Common Carrier Bureau Enforcement  
Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5A848  
Washington, D.C. 20554

\*Lawrence E. Strickling  
Chief, Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5C450  
Washington, D.C. 20554

\*Mark Seifert  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5C411  
Washington, D.C. 20554

\*Glenn Reynolds  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5A847  
Washington, D.C. 20554

\*ITS  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Leon M. Kestenbaum  
Jay C. Keithley  
H. Richard Juhnke  
Sprint Corporation  
1850 M Street, N.W., 11<sup>th</sup> Floor  
Washington, D.C. 20036

Albert H. Kramer  
Rober F. Aldrich  
Dickstein, Sharp, Morin & Oshinsky, L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20037-1526

Mark C. Rosenblum  
Richard H. Rubin  
AT&T  
295 North Maple Avenue  
Room 3252I3  
Basking Ridge, NJ 07920

Michael K. Kellogg  
Aaron M. Panner  
Kellogg, Huber, Hanson, Todd & Evans,  
P.L.L.C.  
1301 K Street, N.W., Suite 100 West  
Washington, D.C. 20005

Jodie Donovan-May  
AT&T  
295 North Maple Avenue  
Room 3252I3  
Basking Ridge, NJ 07920



Barry E. Selvidge  
Communications Central Inc.  
1150 Northmeadow Parkway, Suite 118  
Roswell, GA 30076

Danny E. Adams  
Steven A. Augustino  
Kelley, Drye, & Warren, LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036

Genevieve Morelli  
Competitive Telecommunications Association  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

Dan Frix  
Pamela S. Arluk  
Swidler & Berlin, Chtd.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Michael Shortley  
Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

Kathy L. Shobert  
General Communication Inc.  
901 15<sup>th</sup> Street, N.W., Suite 900  
Washington, D.C. 20005

Danny E. Adams  
Steven A. Augustino  
John J. Heitmann  
Kelley, Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036

Mary J. Sisak  
Mary L. Brown  
MCI WorldCom, Inc.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Steven P. Goldman  
Bradley D. Toney  
Midcom Communications Inc.  
1111 Third Avenue, Suite 1600  
Seattle, WA 98101

Laura H. Phillips  
Loretta J. Garcia  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W., Suite 800  
Washington, D.C. 20036-6802

Mitchell F. Brecher  
Fleischman and Walsh, LLP  
1400 16<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Eric L. Bernthal  
Michael S. Wroblewski  
Latham & Watkins  
1001 Pennsylvania Avenue N.W., Suite 1300  
Washington, D.C. 20004

Bruce W. Renard  
Peoples Telephone Company, Inc.  
2300 879<sup>th</sup> Place  
Miami, FL 33172

Dana Frix  
William B. Wilhelm, Jr.  
Swidler & Berlin, Chtd.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Theodore C. Rammelkamp, Jr.  
Telaleasing Enterprises, Inc.  
601 West Morgan  
Jacksonville, IL 62650

Charles H. Helein  
Helein & Associates, P.C.  
8180 Greensboro, Drive, Suite 700  
McLean, VA 22102

Charles C. Hunter  
Catherine M. Hannan  
Hunter Communications Law Group  
1620 I Street, N.W., Suite 701  
Washington, D.C. 20036

Teresa Marrero  
Teleport Communications Group Inc.  
Two Teleport Drive  
Staten Island, NY 10311

Mary McDermott  
Linda Kent  
USTA  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

Keith Townsend  
Lawrence Sarjeant  
USTA  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

Rachel J. Rothstein  
Cable & Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182